

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COMMONWEALTH CARE ALLIANCE,  
HEALTH CARE FOR ALL, EMILY  
FEINBERG, individually and on behalf of  
persons similarly situated,

Plaintiffs,

v.

MERCK & CO., INC.,

Defendant.

CIVIL ACTION No. 05-CV-10931-DPW

**DEFENDANT MERCK & CO., INC.'S MOTION TO  
STAY ALL PROCEEDINGS PENDING A TRANSFER DECISION  
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Defendant Merck & Co., Inc. (“Merck”) hereby moves this Court to stay all proceedings in this action pending a ruling from the Judicial Panel on Multidistrict Litigation (the “Panel”) on the prospective transfer of the case to *In re VIOXX Products Liab. Litig.* (MDL-1657), the multi-district litigation (“MDL”) proceeding that has been established in the Eastern District of Louisiana, in Judge Eldon E. Fallon’s session, to coordinate all product liability cases involving alleged health risks from VIOXX® (the “VIOXX® cases”).

The case raises legal and factual issues that are the same, in substance, as those of VIOXX® cases brought nationwide and since transferred to Judge Fallon’s MDL proceeding for coordination. Pending the Panel’s inevitable determination that this case will transfer to the MDL Court, a stay of proceedings is necessary and appropriate to achieve the judicial economies that underlie the MDL statute, 28 U.S.C. § 1407.

For the above stated reasons, and for those advanced in the accompanying Declaration of Bradley E. Abruzzi and Memorandum of Law, Merck requests that the Court grant its motion to

stay all proceedings in this case pending the Panel's ruling on transfer of this case to the MDL Court for coordinated pretrial management.

Respectfully submitted,

MERCK & CO., INC.

/s/ Bradley E. Abruzzi  
James J. Dillon (BBO# 124660)  
Bradley E. Abruzzi (BBO# 651516)  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
(617) 832-1000

Dated: May 19, 2005

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

I certify that on May 11, 2005, I spoke with counsel of record Thomas M. Sobol about the issues raised in this motion. No agreement was reached on that date, and subsequent calls to Mr. Sobol's offices have not been returned.

/s/ Bradley E. Abruzzi

**CERTIFICATE OF SERVICE**

I certify that on May 19, 2005, I e-filed the foregoing DEFENDANT MERCK & CO., INC.'S MOTION TO STAY ALL PROCEEDINGS PENDING A TRANSFER DECISION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, causing a true copy of said filing to be served automatically upon:

Thomas M. Sobol  
HAGENS BERMAN SOBOL SHAPIRO LLP  
One Main Street, 4<sup>th</sup> Floor  
Cambridge, MA 02142  
**Counsel for Plaintiffs**

/s/ Bradley E. Abruzzi